

104TH CONGRESS
2D SESSION

H. R. 2993

To establish the Forrestal Institute, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 29, 1996

Mr. HOBSON introduced the following bill; which was referred to the
Committee on National Security

A BILL

To establish the Forrestal Institute, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 TITLE I—FORRESTAL INSTITUTE

4 **SECTION 101. SHORT TITLE; TABLE OF CONTENTS.**

5 (a) SHORT TITLE.—This title may be cited as the
6 “Forrestal Institute Act of 1997”.

7 (b) TABLE OF CONTENTS.—The table of contents of
8 this title is as follows:

TITLE I—FORRESTAL INSTITUTE

- Sec. 101. Short title; table of contents.
- Sec. 102. Definitions.
- Sec. 103. Purpose of title.
- Sec. 104. Establishment of institute.
- Sec. 105. Institute powers.
- Sec. 106. Process of organization.

Sec. 107. Board of directors.
 Sec. 108. Institute governance.
 Sec. 109. Institute capitalization and debt.
 Sec. 110. Institute advisory panel.
 Sec. 111. Authority of military departments to enter into institute contracts.
 Sec. 112. Institute project list.
 Sec. 113. Annual reports.

1 **SEC. 102. DEFINITIONS.**

2 For purposes of this title:

3 (1) The term “Advisory Panel” means the In-
 4 stitute Advisory Panel established by section 110.

5 (2) The term “defense energy facility” means—

6 (A) energy production, consuming, or dis-
 7 tribution facility owned or operated by, or
 8 leased to or from, a military department; and

9 (B) any related infrastructure owned or
 10 operated by a military department, or leased to
 11 or from a military department, located at the
 12 same site as a facility under subparagraph (A).

13 (3) The term “Board of Directors” means the
 14 Board of Directors of the Forrestal Institute.

15 (4) The term “Comptroller General” means the
 16 Comptroller General of the United States.

17 (5) The term “Institute” means the Forrestal
 18 Institute, as authorized to be established by section
 19 104.

20 (6) The term “Director” means a member of
 21 the Board of Directors.

1 (7) The term “environmental study” means a
2 study intended to satisfy the requirements of the
3 National Environmental Policy Act of 1969 (42
4 U.S.C. 4321 et seq.) with respect to a defense en-
5 ergy facility.

6 (8) The term “facility audit” means a survey of
7 a defense energy facility that provides sufficiently
8 detailed information to allow a military department
9 to make an informed decision whether to proceed
10 with one or more Institute projects at such defense
11 energy facility.

12 (9) The term “Institute contract” means an
13 agreement for all or part of the Institute project—

14 (A) directly between the Institute and a
15 military department,

16 (B) between or among a military depart-
17 ment and one or more private parties that has
18 been negotiated by the Institute, or

19 (C) among a military department, one or
20 more private parties and the Institute.

21 (10) The term “Institute project” means any
22 construction, operation, refurbishing, rebuilding, up-
23 grading, or retrofitting of a defense energy facility
24 or any environmental study or facility audit per-

1 formed by a private party for a defense energy facil-
2 ity.

3 (11) The term “military department” means
4 the Department of the Army, the Department of the
5 Navy, and the Department of the Air Force.

6 (12) The term “private party” means any en-
7 tity or organization other than the Department of
8 Defense, a military department, or the Institute.

9 **SEC. 103. PURPOSE OF TITLE.**

10 The Congress hereby declares that it is the purpose
11 of this title to establish a not-for-profit private institute—

12 (1) to help save Federal tax dollars by improv-
13 ing the energy efficiency, economic performance, and
14 environmental acceptability of defense facilities;

15 (2) to help the Department of Defense and the
16 military departments identify, assess, and satisfy
17 their energy and related defense energy facility
18 needs by acquiring Institute projects from private
19 parties;

20 (3) to acquire facility audits from private par-
21 ties for defense facilities to determine the most eco-
22 nomic and environmentally beneficial means of meet-
23 ing such needs;

24 (4) to facilitate Institute contracts between pri-
25 vate parties and the military departments and to

1 enter into Institute contracts with the military de-
2 partments and private parties;

3 (5) to function as a central objective source of
4 energy-related technical, financial, and contracting
5 expertise and advice for the Department of Defense
6 and the military departments;

7 (6) to promote commercially acceptable buying
8 practices in the performance of Institute projects;
9 and

10 (7) to foster synergistic cooperation among de-
11 fense energy facilities and neighboring energy pro-
12 ducers and consumers, including local utilities.

13 **SEC. 104. ESTABLISHMENT OF INSTITUTE.**

14 (a) ESTABLISHMENT.—There is hereby authorized to
15 be established by the Secretary of Defense, in accordance
16 with section 106, a District of Columbia not-for-profit en-
17 tity to be known as the “Forrestal Institute”.

18 (b) TREATMENT.—The Institute shall not be an
19 agency, instrumentality or establishment of the United
20 States Government or a “Government corporation” or
21 “Government controlled corporation” within the meaning
22 of chapter 91 of title 31, United States Code. The Insti-
23 tute shall be subject to the provisions of this title and,
24 to the extent not inconsistent with this title, to the District
25 of Columbia Nonprofit Corporation Act (D.C. Code, sec.

1 29–501 et seq.). Except as provided in this title, or appli-
2 cable laws of the United States, the Institute shall have
3 all the powers of a District of Columbia not-for-profit cor-
4 poration.

5 (c) OFFICE.—The Institute shall maintain an office
6 for the service of process and papers in the District of
7 Columbia, and shall be deemed, for purposes of venue in
8 civil actions, to be a resident thereof. The Institute may
9 establish offices in such other place or places as its Board
10 of Directors may deem necessary or appropriate for the
11 conduct of its business.

12 **SEC. 105. INSTITUTE POWERS.**

13 (a) PERFORMANCE OF INSTITUTE CONTRACTS.—The
14 Institute may enter into an Institute contract to provide
15 any military department an Institute project, through the
16 use of private parties, except that in performing any such
17 contract, the Institute shall procure all subcontracts, sup-
18 plies, and services involving expenditures of over \$100,000
19 through the use of competitive procedures approved by its
20 Board of Directors.

21 (b) NEGOTIATION.—In lieu of performing an Insti-
22 tute contract directly, the Institute may negotiate Insti-
23 tute contracts between or among the military departments
24 and one or more private parties and may solicit and evalu-
25 ate proposals and bids for such contracts.

1 (c) RELATED GENERAL POWERS.—In furtherance of
2 the powers specified under subsections (a) and (b), the
3 Institute—

4 (1) may lease, sublease, purchase, accept gifts
5 or donations of, or otherwise acquire any real, per-
6 sonal, or mixed property, or any interest therein,
7 may own, hold, improve, use, or otherwise deal in or
8 with such property, and may sell, convey, mortgage,
9 pledge, lease, sublease, exchange, or otherwise dis-
10 pose of such property;

11 (2) may perform management support services
12 in connection with Institute projects;

13 (3) may charge to and collect fees for any advi-
14 sory or management support services performed
15 thereby, and for any financial assistance provided
16 thereby with respect to Institute projects;

17 (4) may, subject to subsection (d) below, make
18 loans, enter into guaranty agreements, and other-
19 wise provide financial assistance to a military de-
20 partment or private parties in connection with the
21 leasing, ownership, or financing of an Institute
22 project;

23 (5) may provide or arrange for environmental
24 indemnification of private parties for environmental
25 hazards existing at any defense energy facility at the

1 time the Institute undertakes any Institute project
2 with respect to such facility;

3 (6) may sue and be sued in its corporate capac-
4 ity in any court of competent jurisdiction;

5 (7) may issue notes, bonds, and otherwise incur
6 debt in accordance with section 109; and

7 (8) may structure compensation for Institute
8 contracts as a percentage of the savings to the gov-
9 ernment to provide additional incentives for the In-
10 stitute to maximize such savings.

11 (d) LIMITATIONS.—Notwithstanding this section or
12 any other provision of this title, the Institute shall not
13 have any power, directly or indirectly, to invest in an Insti-
14 tute project or otherwise acquire or retain an ownership
15 interest in an Institute project or its associated stream
16 of revenues. The Institute shall have no power to perform
17 the facility audit, design, construction, rebuilding, upgrad-
18 ing, retrofitting, or long-term operation of an Institute
19 project, except through the use of private parties.

20 **SEC. 106. PROCESS OF ORGANIZATION.**

21 (a) INCORPORATION.—(1) Within 30 days after the
22 date of the enactment of this title, the Secretary of De-
23 fense shall appoint the Chairman of the Board of Direc-
24 tors and four additional persons to serve as the

1 incorporators thereof. The incorporators may not be offi-
2 cers or employees of the United States.

3 (2) Within sixty days after the completion of the ap-
4 pointments, the incorporators shall take whatever actions
5 are necessary or appropriate to incorporate the Institute,
6 including the signing and filing of articles of incorpora-
7 tion. The incorporators for the Institute shall also serve
8 as the initial Board of Directors thereof.

9 (b) INITIAL OPERATIONS.—(1) Within sixty days
10 after the incorporation of the Institute, the Chairman of
11 the Board of Directors shall appoint a President of the
12 Institute from private life who shall serve at the pleasure
13 of the Board of Directors.

14 (2) The President shall have such powers and may
15 exercise such authority as is necessary for the proper oper-
16 ation of the Institute, including the hiring of employees.

17 (3) To assist in the start-up of the Institute, the Sec-
18 retary of Defense may detail, upon receipt of a written
19 request from either President thereof and approval of the
20 Military Department concerned if requested from a Mili-
21 tary Department, appropriate personnel as may be re-
22 quired for the Institute's functioning, until such time as
23 officers and employees of the Institute are hired. No such
24 detail of personnel shall exceed two years in length. The

1 Institute shall reimburse the Department of Defense for
2 the salary and benefit costs of such detailed personnel.

3 (c) ADDITIONAL INSTITUTES.—The Secretary shall
4 have the authority to establish up to five Institutes, if in
5 his judgment additional Institutes would encourage in-
6 creased administrative and technical expertise and effi-
7 ciency through competition between Institutes and/or re-
8 gionalization or specialization of responsibilities.

9 **SEC. 107. BOARD OF DIRECTORS.**

10 (a) APPOINTMENT.—The Institute shall be managed
11 by or under the direction of its Board of Directors, which
12 shall consist of five individuals who shall be appointed as
13 follows:

14 (1) A Chairman of the Board of Directors who
15 shall be appointed by the Secretary of Defense from
16 private life.

17 (2) Four individuals who shall be appointed by the
18 Secretary of Defense from private life.

19 (b) TERM.—The term of each Director shall be three
20 years. Any Director appointed by the Board of Directors
21 to fill a vacancy may be appointed only for the unexpired
22 term of the succeeded Director.

23 (c) COMPENSATION.—Directors, including each
24 Chairman, shall serve on a part-time basis and shall be
25 paid at a commercially reasonable rate established by the

1 Board of Directors, after consultation with the Advisory
2 Panel.

3 **SEC. 108. INSTITUTE GOVERNANCE.**

4 (a) BYLAWS.—The Board of Directors shall adopt
5 and may from time to time amend in accordance with the
6 District of Columbia Nonprofit Corporation Act (D.C.
7 Code, sec. 29–501 et seq.), such bylaws as are necessary
8 for the proper management and operation of the Institute.
9 Such bylaws shall not be inconsistent with the provisions
10 of this title or the articles of incorporation adopted by the
11 Institute.

12 (b) OFFICERS AND EMPLOYEES.—(1) The Board of
13 Directors shall appoint a President, who shall be the chief
14 executive officer of the Institute, and establish such other
15 officers as the Board of Directors may deem appropriate,
16 define their duties, and establish a system of compensation
17 for individual officer positions and other categories of em-
18 ployees. All officers appointed shall be from private life.

19 (2) The Institute shall recruit and employ (on a per-
20 manent or temporary basis as the Board of Directors
21 deems appropriate) persons with appropriate technical, fi-
22 nancial, legal, contracting, and operational expertise to as-
23 sist in the identification and acquisition of Institute
24 projects and Institute contracts, and shall employ such
25 other administrative personnel as the Board of Directors

1 determines necessary or appropriate for the proper oper-
2 ation of the Institute.

3 (3) Except as specifically provided in this title, Direc-
4 tors, officers, and employees of the Institute, shall not be
5 subject to any law of the United States relating to post-
6 Federal employment by reason of their employment with
7 the Institute.

8 (4) No political test or qualification shall be used in
9 selecting, appointing, promoting, electing, or taking other
10 personnel actions with respect to Directors, officers,
11 agents, and employees of the Institute.

12 (c) FISCAL YEAR.—The fiscal year of the Institute
13 shall begin on each October 1 and end on the subsequent
14 September 30.

15 (d) INDEPENDENT AUDITS.—(1) The financial state-
16 ments of the Institute shall be audited annually in accord-
17 ance with generally accepted auditing standard by a firm
18 of independent certified public accountants of recognized
19 national standing selected by the Board of Directors. All
20 books, accounts, financial records, reports, files and other
21 papers, things, and property belonging to or used by the
22 Institute and necessary to facilitate each audit shall be
23 made available to the firm conducting such audit.

24 (2) The Comptroller General may review any audit
25 of the Institute's financial statements conducted under

1 paragraph (1). The Comptroller General shall report to
2 Congress and the Institute the results of any such review
3 and shall include in such report any recommendations
4 based on such review.

5 (3) All books, accounts, financial records, reports,
6 files, papers, and property belonging to or used by the In-
7 stitute and its auditing firm that the Comptroller General
8 considers necessary to the performance of any audit or
9 review under this section shall be made available to the
10 Comptroller General.

11 (e) CONFLICTS OF INTEREST.—(1) Except as per-
12 mitted by paragraph (3), no Director of the Institute shall
13 vote on any matter respecting any application, contract,
14 claim, or other particular matter pending before the Insti-
15 tute, in which, to his or her knowledge, he or she, his or
16 her spouse, parent, minor child, partner, or an organiza-
17 tion (other than the Institute) in which he or she is serving
18 as officer, director, trustee, partner, or employee, or any
19 person or organization with whom he or she is negotiating
20 or has any arrangement concerning prospective employ-
21 ment, has a financial interest.

22 (2) Action by a Director contrary to the prohibition
23 contained in paragraph (1) shall be grounds for removal
24 of such Director by the Board of Directors, but any such
25 action shall not impair or otherwise affect the validity of

1 any otherwise lawful action by the Institute in which such
2 Director participated.

3 (3) The prohibition contained in paragraph (1) shall
4 not apply if the Director first advises the Board of Direc-
5 tors of the nature of the particular matter in which he
6 or she proposes to participate and makes full disclosure
7 of such financial interest, and the Board of Directors de-
8 termines by majority vote that such financial interest is
9 too remote or too inconsequential to affect the integrity
10 of such Director's services for the Institute in that matter.
11 The Director involved shall not participate in such deter-
12 mination.

13 (4) No person or entity that is an employee of the
14 Institute shall be allowed to enter into an Institute con-
15 tract for, or to propose for or to bid on, an Institute con-
16 tract for materials to be furnished or work to be performed
17 pursuant to or in connection with an Institute contract.

18 (5) No part of the income or assets of the Institute
19 shall inure to the benefit of any director, employee, or
20 other individual except as salary or reasonable compensa-
21 tion for services.

22 **SEC. 109. INSTITUTE CAPITALIZATION AND DEBT.**

23 (a) FEDERAL CONTRIBUTION.—In order to provide
24 the institute with initial capital adequate to exercise its
25 functions and responsibilities, there is authorized to be

1 transferred to the Institute from the Department of De-
2 fense from funds otherwise available for energy savings
3 an amount not to exceed \$5,000,000 for the fiscal year
4 1997, and \$5,000,000 for the fiscal year 1998 (with each
5 of these amounts to be available until expended). Repay-
6 ment of these funds shall be made to the Department from
7 compensation from a percentage of savings to the govern-
8 ment in excess of operational costs, at the discretion of
9 the Board of Directors.

10 (b) ISSUANCE AND SALE OF DEBT INSTRUMENTS.—

11 For the purposes of maintaining working capital, the In-
12 stitute may issue, sell, and have outstanding such notes,
13 bonds, and other debt instruments having such maturities
14 and bearing such rate or rates of interest as may be deter-
15 mined by the Board of Directors in an amount not to ex-
16 ceed \$10,000,000.

17 (c) RULES OF CONSTRUCTION.—No instrument that
18 is issued, insured, or guaranteed by, or otherwise is an
19 obligation of the Institute, nor any contractual undertak-
20 ing by the Institute, shall be construed to be an obligation
21 or undertaking of the United States, or an obligation or
22 undertaking which is guaranteed by the full faith and
23 credit of the United States.

1 **SEC. 110. INSTITUTE ADVISORY PANEL.**

2 (a) ESTABLISHMENT.—There is hereby established
3 an Institute Advisory Panel to advise the Board of Direc-
4 tors of the Institute. The Institute Advisory Panel shall
5 review the Institute’s operations and advise the Institute
6 regarding such other matters as the Board of Directors
7 may request of the Institute Advisory Panel from time to
8 time.

9 (b) MEMBERS.—The Institute Advisory Panel shall
10 be comprised of the Assistant Secretary of Defense for
11 Economic Security and such representatives from the pri-
12 vate sector as each Board of Directors may select to en-
13 sure that the views of the financial community and the
14 various segments of the energy industry (including the en-
15 ergy service companies, the independent power producers,
16 the utilities, and architectural and engineering companies)
17 are available to each Board of Directors. The Assistant
18 Secretary of Defense for Economic Security shall be the
19 Chairperson of the Institute Advisory Panel.

20 (c) MEETINGS.—The Institute Advisory Panel shall
21 meet with each Board of Directors not less than semi-
22 annually.

23 **SEC. 111. AUTHORITY OF MILITARY DEPARTMENTS TO**
24 **ENTER INTO INSTITUTE CONTRACTS.**

25 (a) GENERAL AUTHORITY.—Any military depart-
26 ment may select the Institute to perform one or more In-

1 stitute contracts for the performance of the Institute
2 project based upon an evaluation of technical proposals
3 submitted by the Institute; provided all goods and services
4 contracted for pursuant to any such Institute contract
5 shall be supplied by subcontractors selected in accordance
6 with section 105. Institute contracts may be for one or
7 more Institute projects, and any military department may
8 enter into a single Institute contract with the Institute au-
9 thorizing multiple Institute projects to be performed on
10 behalf of such military department. No Institute contract
11 may exceed a period of 30 years.

12 (b) EXCEPTION FROM CONTRACT REQUIREMENTS.—
13 Except as provided in subsection (c) and in order to foster
14 the growth of standard industry practices in Federal pro-
15 curement, no Federal law, rule, or regulation dealing with
16 the solicitation, award, execution, delivery or performance
17 of public or Federal contracts (including chapter 137 title
18 10, United States Code) shall apply to any Institute con-
19 tract or any subcontract awarded thereunder.

20 (c) CONTINUED APPLICATION OF CERTAIN REQUIRE-
21 MENTS.—The following provisions shall apply to every In-
22 stitute contract and any subcontracts awarded under the
23 Institute contract:

24 (1) The Act of March 3, 1931 (40 U.S.C. 276a
25 et seq.), commonly known as the Davis-Bacon Act.

1 (2) The dispute resolution procedures of the
2 Contract Disputes Act of 1978 (41 U.S.C. 601 et
3 seq.).

4 (d) SALE OF EXCESS ELECTRIC POWER.—The sale
5 of electric power produced in excess of the amount needed
6 by a military department as a result of an Institute con-
7 tract shall be subject to applicable Federal and State law
8 governing the sale and transmission of electric power and
9 the provision of electric utility services, including State
10 utility commission rulings and electric utility franchises or
11 service territories established pursuant to State law or reg-
12 ulation.

13 (e) TERMINATION CLAUSE.—Institute contracts may
14 contain a clause authorizing the termination of an Insti-
15 tute contract for the convenience of the Government. Such
16 clause may permit anticipatory profits and consequential
17 damages to the extent of termination.

18 (f) LEASE OF REAL PROPERTY AUTHORIZED.—The
19 Secretary of a military department may lease, at fair mar-
20 ket value, real and related personal property under the
21 jurisdiction and control of the Secretary in connection
22 with an Institute project undertaken pursuant to an Insti-
23 tute contract for a period not in excess of fifty years. The
24 interest of a lessee of property leased under this section
25 may be taxed by State or local governments.

1 (g) RULE OF CONSTRUCTION.—No officer, director,
2 or employee of the Institute shall be construed to be a
3 “procurement official” as such term is used in the Office
4 of Federal Procurement Policy Act.

5 (h) CONSULTATION WITH LOCAL PUBLIC UTIL-
6 ITY.—Any public utility supplying electric energy or natu-
7 ral gas to a military installation shall be notified by the
8 Institute of any proposed Institute contract or Institute
9 project at such installation and the military department
10 and the Institute issuing any such proposal for such Insti-
11 tute contract or Institute project shall consult with such
12 utility relative to its ability to serve the installation’s needs
13 and the effect of the proposal on such utility. Nothing
14 herein shall preclude such public utility from bidding upon
15 and receiving the award of such Institute contract.

16 **SEC. 112. INSTITUTE PROJECT LIST.**

17 Within one hundred and eighty days after the date
18 of the incorporation of the Institute, the Secretaries of the
19 Military Departments will develop and submit to the Insti-
20 tute a list of defense energy facilities potentially suitable
21 to the test of Institute contracts pursuant to the authority
22 of this title. The Secretary of a Military Department may
23 contract with the Institute to aid in the preparation of
24 this list.

1 **SEC. 113. ANNUAL REPORTS.**

2 The Institute shall prepare and submit to the Sec-
3 retary of Defense within ninety days after the close of each
4 fiscal year an annual report of its activities. Such report
5 shall contain—

6 (1) a general description of the Institute's oper-
7 ations;

8 (2) a summary of the Institute's operating and
9 financial performance; and

10 (3) a copy of the financial statements of the In-
11 stitute for the related fiscal year together with the
12 audit report on such statements prepared pursuant
13 to section 108(d).

○